

DOCKET NO. KNL-CV20-6046141S

**THE GARDNER LAKE VOLUNTEER
FIRE COMPANY, INC.**

: SUPERIOR COURT

VS.

**: JUDICIAL DISTRICT OF
NEW LONDON**

TOWN OF SALEM

: MAY 13, 2020

AMENDED COMPLAINT

COUNT ONE: BREACH OF EXPRESS CONTRACT

1. Plaintiff The Gardner Lake Volunteer Fire Company, Inc. (hereinafter sometimes referred to as "GLVFC") is a private, non-profit, corporation organized and existing under the laws of the State of Connecticut with its principal place of operations located at 429 Old Colchester Road, Salem, CT 06420.

2. Plaintiff has been providing volunteer emergency medical and fire protection services to the Town of Salem since its inception on March 6, 1956. Over the course of its existence, Plaintiff has provided volunteer emergency services to thousands of residents and visitors to the Town of Salem.

3. Defendant Town of Salem is a municipality and a subdivision of the State of Connecticut and possesses the powers set forth in Connecticut General Statutes § 7-148, including the power to contract and to sue and be sued.

4. Pursuant to Connecticut General Statutes § 19a-181b, Defendant Town of Salem is obligated to establish a local emergency plan to provide emergency medical services plan to protect the health and safety of the residents of the Town of Salem.

5. Plaintiff has been designated by the State of Connecticut's Department of Health, pursuant to Connecticut General Statutes § 19a-177, as the sole Primary

Service Area Responder for Basic Ambulance service within the boundaries of the Town of Salem and has been issued Certificate of Operation C1212B1.

6. In accordance with Connecticut General Statutes § 19a-181b, Defendant Town of Salem has created a Local Emergency Medical Services Plan (“LEMSP”), revised May 13 2019, and signed by First Selectman Kevin Lyden, that lists Plaintiff as the provider of “Ambulance and Supplemental First Responder” services.

7. The LEMSP also sets for the following under the heading “Independent Agency Status:”

There are two career personnel on duty Monday through Friday from 7:00 A.M. to 5 P.M. These two career personnel are provided to the GLVFC and SVFC [Salem Volunteer Fire Company] by the Town of Salem and provide basic and first responder EMS. The volunteer staff provides basic and first responder EMS and are provided by GLVFC and SVFC. *The GLVFC, SVFC, Paramedic Services, and Mutual Aid Services provided to the Town are incorporated independently of the Town. As such, they are governed by their own corporate boards and by-laws, and operation in compliance with State and Federal laws.* (emphasis added)

8. Under the heading, “Local System Comparison to Model EMS System,” GLVFC is designated to conduct CPR classes for the community as well as safety awareness training, and is designated as Supplemental and Basic First Responder Service Providers for the Town of Salem.

9. Under the heading, “EMS Development Goals and Objectives,” and in particular, with respect to the goal of timely and efficient and cost-effective delivery of emergency medical services, the Town of Salem stated that its goals and objectives included the obligation to: (a) “Conduct initiatives and incentive programs to promote volunteerism in the SVFC and GLVFC focused on EMS personnel,” and (b) “Foster

community awareness, participation in, and support of the Emergency Medical Services Systems in the Town of Salem.”

10. The Town of Salem’s LEMSP also makes the following statement just prior to the signature of First Selectman Lyden, “The Town’s objective is to provide our citizens and visitors with the best EMS system possible with the resources available to us. The elected officials and citizens of the Town of Salem support our EMS system. We encourage you to become a volunteer member of the Gardner Lake or Salem Volunteer Fire Company.”

11. Plaintiff owns the firehouse located at 429 Old Colchester Road as well as the ambulance that is used to provide emergency medical services to the visitors and residents of the Town of Salem. Plaintiff also provides space at its firehouse for the storage and use of a fire truck and emergency equipment owned by the Town of Salem.

12. On February 6, 2006, in order to comply with the obligation to provide EMS, Plaintiff and Defendant entered into the latest iteration of the Emergency Services Agreement (“the Agreement”). The Agreement was signed by all five members of the “Board of Selectman” and by the President of Plaintiff.

13. Under the terms of the Agreement, Plaintiff agreed to provide emergency services that would be paid for by the Town of Salem from amounts budgeted by the Town and appropriated by the citizens of the Town of Salem at its annual Town meeting as follows.

- a. In paragraph I, the Plaintiff and Defendant agreed that the Plaintiff would continue to provide the Town of Salem with adequate fire protection and ambulance services.

- b. In paragraph II, Plaintiff and Defendant agreed that the Town of Salem “shall continue to appropriate sufficient funds to the [Plaintiff] for the operation, maintenance and purchase of equipment, based upon an estimated annual budget prepared by the [Plaintiff] and submitted to the [Defendant], subject to approval by the Salem Board of Finance and the Salem Town Meeting.”
- c. In paragraph III, Plaintiff and Defendant agreed that the existence of the Agreement would not “in any way, infringe upon the volunteer status of [Plaintiff] or prior rights of mutual aid in place with any other fire company or companies.”
- d. In paragraph IV, Plaintiff and Defendant agreed to maintain a schedule of assets acquired with Town funds, which assets would remain the property of the Town held in trust by the Plaintiff.
- e. In paragraph V, Plaintiff and Defendant made clear that the Agreement would continue until July 1, 2006, and would automatically be renewed each year for an annual term unless terminated by either party with 120 days prior written notice. The Agreement would also terminate in the event the Plaintiff dissolved.
- f. In paragraph VI, Plaintiff and Defendant stated that the Agreement may be modified in writing by the parties.

14. From March of 1956 until May of 2019, Plaintiff and Defendant worked cooperatively to assure that emergency medical and fire protection services would be provided to the residents and visitors to the Town of Salem.

15. As noted in the LEMSP, Defendant employs two career individuals who provide assistance to the GLVFC and SVFC during weekdays.

16. From time to time, including in 2019, career individuals employed by the Defendant as firefighters and emergency services technicians were also members of Plaintiff. One such individual is James Savalle, who at all times relevant to this complaint was both an employee of the Defendant and a member of the Plaintiff serving as its Fire Chief.

17. Through the relevant time period of this complaint, Plaintiff coordinated with Defendant to provide volunteer emergency and fire suppression services such that Defendant's emergency service employees covered the Town of Salem in person and on call during weekdays and Plaintiff's volunteers, along with the SVFC volunteers, covered the Town of Salem at nights and on weekends.

18. Each year, Plaintiff submitted an annual estimated budget to the Town of Salem's Board of Finance and then an agreed upon amount was submitted to the Town of Salem's residents for approval on or about the first of July being the commencement of the Town of Salem's fiscal year.

19. In 2019, Plaintiff submitted an annual estimated budget that included the cost of paying stipends and other costs associated with the Plaintiff's ability to operate and maintain the emergency services capability required by the Agreement. The Board of Finance approved a budget for those services and the residents of the Town of Salem voted in favor of that appropriation of those funds.

20. On May 20, 2019, Defendant's First Selectman, Kevin Lyden, issued a directive to Fire Chief James Savalle concerning volunteering his services for GLVFC.

21. The directive issued by First Selectman Lyden dated May 20, 2019 was contrary to legal advice received by the Defendant since 2007 concerning the same subject matter.

22. The directive dated May 20, 2019 informed Fire Chief Savalle that he could no longer provide the same emergency services to the Plaintiff as a volunteer on nights and weekends that he was providing to the Defendant as an employee during the weekdays.

23. The May 20, 2019 directive to Fire Chief Savalle threatened to terminate his employment should he fail to abide by the new restriction.

24. The May 20, 2019 directive was based upon a new interpretation of wage and hour law that First Selectman Lyden solicited from a different law firm than the one that had been advising the Town of Salem on this employment issue. Significantly, there had been no change in the law that required this new interpretation of the law resulting in the directive.

25. Rather, the sole basis for the May 20, 2019 directive was the Town of Salem's mistaken belief that the Plaintiff could be appropriately designated a "public agency" for purposes of the federal Fair Labor Standards Act ("FLSA") which governs the payment of wages, including overtime.

26. According to the most current "Fact Sheet # 7" issued by the United States Department of Labor, the federal agency designated to enforce the FLSA, last revised March 2011, a "public agency" is defined as "the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States, a State, or a political subdivision of a State; or any interstate governmental agency."

27. According to the most current “Fact Sheet # 7” issued by the United States Department of Labor, the federal agency designated to enforce the FLSA, last revised March 2011, “The public agency definition does not extend to private companies that are engaged in work activities normally performed by public employees.”

28. In response to the May 20, 2019 directive, Plaintiff met with representatives of the Town of Salem in May of 2019, and again on June 19, 2019.

29. During the meetings in May of 2019 and on June 19, 2019, Plaintiff demonstrated that it was not a “public agency” or department of the Town of Salem for purposes of the FLSA by providing official letters of opinion from the United States Department of Labor and case law from federal courts.

30. The information provided during the meetings in May of 2019 and on June 19, 2019 demonstrated that since Plaintiff had always been a not for profit, independent corporation established under Connecticut law with its own Board of Directors, Officers, and By-Laws, federal law clearly established Plaintiff was not a public agency.

31. The information provided during the meeting on June 19, 2019 also established that the only FLSA issue that could arise under the cases interpreting the FLSA and the volunteer provision therein was whether the Defendant and Plaintiff could be considered “joint employers” of the volunteers for FLSA wage claim purposes.

32. In order to conclusively resolve the “joint employer” issue and provide Fire Chief Savalle the opportunity to continue to provide his essential services as a volunteer on nights and weekends, Plaintiff submitted a proposed, revised emergency services agreement, on or about June 21, 2019, to the Defendant in order to make clear that the parties were independent and not “joint employers” for purposes of the FLSA.

33. One necessary change suggested by Plaintiff in the revised emergency services agreement was to cease the practice of having Defendant pay Plaintiff's members directly for the volunteer stipends and allow Plaintiff to directly administer the payment of stipends to volunteers. Prior to August 1, 2019, volunteers had been receiving payments directly from the Defendant supported by submission of time cards to the Town of Salem and the issuance of a federal IRS W-2 form by the Town of Salem. By treating Plaintiff's members as employees for the purpose of issuing stipend payments could support a claim that Defendant and Plaintiff were "joint employers" of the volunteers. The submission of time cards and the direct payment of the volunteers by the Town of Salem was the only significant factor that required modification so as to avoid any possibility of FLSA violation.

34. Inexplicably, and contrary to the more than 60 years of cooperation between Plaintiff and Defendant in providing emergency services to the visitors and residents of the Town of Salem, and contrary to the best interests of public health and safety, Defendant, acting exclusively at the direction of First Selectman Lyden, refused to discuss modifications to the Agreement in order to eliminate any issue with the FLSA.

35. Instead of working cooperatively with Plaintiff to revise the Agreement, First Selectman Lyden continued to threaten Fire Chief Savalle with discipline, up to and including termination of his employment with the Town of Salem, should he violate the May 20, 2019 directive and volunteer his service to Plaintiff on nights and weekends.

36. On or about July 25, 2019, Plaintiff's President Cheryl Philopena sent a letter to First Selectman Lyden, a copy of which is attached to this complaint as Exhibit A and incorporated by reference. In that letter President Philopena advised First

Selectman Lyden that “The loss of Chief Savalle’s volunteer services constitutes a serious disruption with the activities of the GLVFC’s operations and coverage.”

37. In the July 25, 2019 letter, President Philopena informed First Selectman Lyden that commencing August 1, 2019, it would no longer allow volunteers to submit time cards to the Town of Salem, nor would it allow Defendant to directly pay for the stipend being paid to members of Plaintiff. Plaintiff further informed First Selectman Lyden that it would submit an invoice based on 1/12th of the annual amount appropriated by the Town of Salem for the purpose of paying the stipend, and then Plaintiff would pay this amount directly to the volunteers who were its members.

38. Plaintiff closed the July 25, 2019 letter by stating, “The safety of the citizens of the Town is our paramount concern and Chief Savalle’s services are a vital part of that effort.”

39. Given that direct payment by Defendant to the members of Plaintiff supported by an IRS W-2 Form was the only significant factor that could support a joint employer claim, Plaintiff reasonably took this action to allay the alleged concerns of First Selectman Lyden and allow Fire Chief Savalle to continue to volunteer his services for the safety of the Town of Salem’s residents.

40. Plaintiff hoped that First Selectman would also act reasonably in response to this communication, however First Selectman Lyden once again refused to cooperate and by letter dated July 31, 2019 continued to threaten Chief Savalle with termination should he fail to adhere to the May 20, 2019 directive.

41. In addition, during a negotiating session involving Chief Savalle’s union, Chief Savalle presented a letter of opinion from counsel dated January 13, 2020,

summarizing the federal precedent that established the Town of Salem's claim of potential FLSA violation was unwarranted. The Town of Salem never responded to the legal authority set forth in that letter.

42. In January of 2020, representatives of GLVFC met with the Fire Marshals for the Town of Salem in an attempt to draft an agreement that would provide for stipend payments to volunteer paid through the volunteer fire companies in order to address the FLSA issue. After several meetings in January and February 2020, GLVFC and the Fire Marshals for the Town of Salem had reached agreement in principle and only required review and approval from the First Selectman. To date, the First Selectman has not responded to this proposed stipend payment agreement.

43. First Selectman Lyden's unreasonable refusal to allow Chief Savalle to participate in volunteer emergency services without any basis whatsoever in FLSA law has had real, life or death consequences to the residents of the Town of Salem. For example, on Saturday, February 29, 2020, an emergency call was received for a victim who lived 1.2 miles from Chief Savalle's residence. Because of the threat of termination of employment, Chief Savalle was unable to respond to this call. The individual, a male in his 70's, appeared to have stroke symptoms which was later confirmed after transport and stabilization at Backus Hospital. As it turned out, the stroke victim that Chief Savalle was not permitted to attend because of First Selectman Lyden's baseless FLSA claim and the threat of termination of employment was Chief Savalle's cousin.

44. Between May 20, 2019 and the present, Plaintiff has continued to provide coverage for needed emergency services with volunteers as expected under the terms of the Agreement on weekday nights and weekends. During this time Plaintiff

responded to 236 dispatched emergencies involving 242 patients, including automobile accidents.

45. Because the shifts filled by volunteers on nights and weekends who are members of Plaintiff are coordinated with the Town of Salem, Defendant is fully aware of the benefit it is receiving from Plaintiff.

46. On March 15, 2020, Plaintiff made demand on the Town of Salem, informing First Selectman Lyden that unless payment was made for the emergency services rendered as had been repeatedly requested, Plaintiff would have no choice but to commence an action to collect the amounts due if payment was not made by March 20, 2020.

47. Despite the March 15, 2020 letter and repeated requests for payment, Defendant has not paid Plaintiff the money approved and allocated by the citizens of the Town of Salem for these purposes and, as of February 29, 2020, Defendant owes Plaintiff Forty Thousand Nine Hundred Forty (\$40,940) Dollars for the period of September 19, 2019 through April 30, 2020. The amount owed continues to increase on a monthly basis as Defendant neglects its responsibility to pay for these services.

48. In the absence of payment of the invoices to reimburse Plaintiff for the stipends paid to its volunteers by Defendant, Plaintiff has had to make use of other funds designated as a sinking fund for replacement of the ambulance that is owned by Plaintiff and used to provide emergency services to the residents of the Town of Salem.

49. By its failure to pay for the services rendered by Plaintiff for the "operation" of the emergency services as required by the Agreement, Defendant is in breach of the

express written Agreement and owes Plaintiff for the services rendered at Defendants' request and with its full knowledge.

50. Plaintiff has suffered damages by the breach of the express agreement.

COUNT TWO: BREACH OF IMPLIED IN FACT CONTRACT

1-48. Paragraphs 1 through 48 of Count One are hereby incorporated by reference and made paragraphs 1 through 48 of Count Two as though more fully set forth herein.

49. By its failure to pay for the services rendered by Plaintiff for the "operation" of the emergency services as required by the Agreement, Defendant is in breach of the implied in fact agreement owes Plaintiff for the services renders at Defendants' request and with its full knowledge.

50. Plaintiff has suffered damages by the breach of the implied in fact agreement.

COUNT THREE: UNJUST ENRICHMENT

1-48. Paragraphs 1 through 48 of Count One are hereby incorporated by reference and made paragraphs 1 through 48 of Count Three as though more fully set forth herein.

49. Defendant has knowingly accepted the benefits of the volunteer services and it would be contrary to equity and fairness if Defendant is allowed to be unjustly enriched. Equity requires the Court to order Defendant to pay for the volunteer services rendered in accordance with the amounts requested and as allocated by the citizens of the Town of Salem for emergency services.

COUNT FOUR: TORTIOUS BREACH OF CONTRACT

1-48. Paragraphs 1 through 48 of Count One are hereby incorporated by reference and made paragraphs 1 through 48 of Count Four as though more fully set forth herein.

49. Plaintiff and Defendant have a special relationship based on the Town of Salem's need for emergency services as indicated in the LEMSP and GLVFC's status as the only entity certified by the State Department of Health to provide Basic Ambulance Services as well as the long history of cooperation in establishing an infrastructure to provide emergency services.

50. In addition to his refusal to cooperate with GLVFC in arranging for the payment of stipends for volunteers, First Selectman Lyden has taken affirmative steps of harassment by having counsel for the Town of Salem file a complaint with the Freedom of Information Commission over its intrusive request for information. Even though the Salem Volunteer Fire Company is also subject to the Freedom of Information Act, First Selectman Lyden has not made similar requests for information of that volunteer company, nor has First Selectman Lyden filed complaints against them.

51. First Selectman Lyden has also continuously harassed Chief Savalle at every opportunity in order to interfere with the operation of Plaintiff and to weaken its ability to function as follows.

A. During the negotiations between the Town of Salem and the union representing Chief Savalle in his capacity as an employee of the Defendant, First Selectman Lyden has insisted on including a provision in the collective bargaining agreement that prevents Chief Savalle from volunteering his services to Plaintiff, despite the fact that such a provision violates Connecticut General Statutes § 7-323t, entitled “Municipal contracts prohibiting paid emergency personnel from volunteer service,” which states in relevant part: “[no municipality shall enter into a contract that prohibits paid firefighters or paid emergency personnel of such municipality from serving as active members of a volunteer fire department in the municipality in which such firefighters or emergency personnel reside during personal time.”

B. In November of 2019, Chief Savalle was injured in the line of duty while responding to a call. First Selectman Lyden has denied Chief Savalle Worker’s Compensation coverage for this injury forcing Chief Savalle to exhaust all of his compensatory time to cover lost wages and to incur medical bills that are the responsibility of the Town of Salem.

C. In January of 2020, First Selectman Lyden denied Chief Savalle a medical leave of absence as provided for by the federal Family and Medical Leave Act making the false claim that the Town of Salem employs less than 50 employees when well-established law and the Census of Governments clearly establishes that the Town of Salem is required to include, as employees, workers at the Board of Education.

D. In April of 2020, First Selectman Lyden imposed disciplinary action in violation of the terms of the collective bargaining agreement when First Selectman Lyden caused Chief Savalle to be disciplined by a suspension without pay for five days because he provided medical attention to the victim of a serious motor vehicle accident in the Town of Colchester.

Although Chief Savalle was in his personal vehicle when he came upon a one car roll-over accident on his way to deliver personal protective equipment to assist the Colchester Volunteer Fire Department in their fight against COVID-19, First Selectman Lyden claimed that Chief Savalle had violated the May 20, 2019 restriction on his ability to volunteer in the Town of Salem.

52. First Selectman Lyden has also attempted to control the finances and operation of private funds of the GLVFC through audits of the records of the Plaintiff.

53. On numerous occasions in 2019, over First Selectman Lyden has stated to other public officials, including the Board of Finance, "I have got Gardner Lake under control."

54. First Selectman Lyden has made it plain that he intends to take control of the GLVFC as if it were not an independent, non-profit corporation but rather a department of the Town of Salem.

55. Plaintiff has resisted the efforts of First Selectman Lyden to control the activities of its organization.

56. Because Plaintiff has resisted the efforts to take control of its organization, First Selectman Lyden is refusing to pay GLVFC the money owed by the Town of Salem in order to weaken and destroy Plaintiff as an independent entity consistent with First Selectman Lyden's malicious and evil desire to take over Plaintiff.

57. Defendant, by and through the actions of First Selectman Lyden, has acted outrageously and maliciously and with reckless indifference to the rights of Plaintiff under the Agreement and to the rights of the citizens of the Town of Salem who are entitled to receive emergency services from Plaintiff without bogus restrictions imposed by the First Selectman solely to advance his political career.

Wherefore, Plaintiff demands judgment against Defendant Town of Salem, and the following.

1. Damages;
2. Punitive damages;
3. Interest for money wrongfully withheld;
4. Equitable relief based on unjust enrichment;
5. Costs.

Dated at New London, Connecticut this 13th day of May, 2020.

PLAINTIFF,
THE GARDNER LAKE VOLUNTEER
FIRE COMPANY, INC.

By: /s/Jacques Parenteau
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Amended Complaint has been mailed via first class mail to the following counsel of record on this 13th day of May, 2020:

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/s/Jacques Parenteau
Jacques J. Parenteau